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BEFORE THE ARIZONA CORPORATION COMMISSION

2002 MAY 20 P 4: 32

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E-00000A-02-0051
E-01345A-01-0822
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E-01933A-98-0471

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

**TUCSON ELECTRIC POWER
COMPANY'S COMMENTS TO
COMMISSION STAFF'S REQUEST
FOR A PROCEDURAL ORDER**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby provides the Commission Staff with its comments to the topics identified in "Staff's Request for a Procedural Order" dated May 13, 2002 ("Staff's Request"), as follows:

Staff's Request seeks written comments by parties to this docket to four (4) topics: (1) criteria for selecting the independent evaluator; (2) the role of the independent evaluator; (3) the payment arrangements for the independent evaluator; and (4) a description of various types of competitive solicitations and their attributes.

Staff's Request assumes several critical factors that TEP does not believe are settled. First, that the Commission's re-evaluation of the Electric Competition Rules has concluded that electric competition is in the best public interest and how it should proceed. Second, that if electric competition is to proceed, then competitive solicitation is an appropriate component of the process. And, third, that an independent evaluator is necessary. TEP's mention of these factors should not be interpreted as opposition to the

Arizona Corporation Commission

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1 Procedural Order or Staff's Request. However, TEP believes that the Commission must
2 formally and separately address each of these factors.¹ The Commission's ultimate
3 determination of these factors may impact TEP's comments stated herein.
4

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6 **I. Criteria for Selecting the Independent Evaluator.**

7 TEP has indicated in its "Track B Proposals" that it does not believe that an
8 independent evaluator is necessary to the development of a competitive solicitation
9 process. TEP believes that there is sufficient expertise among the utilities, merchants,
10 Commission Staff and other intervenors in this proceeding to establish guidelines for the
11 competitive solicitation of electric power. Also, up to this point in time, there have been
12 few competitive solicitation processes that have been implemented (and with limited
13 experience with which to judge their long term success) so TEP is not convinced that an
14 independent evaluator would have incrementally more experience in developing
15 appropriate policies and procedures than the participants in this docket.
16

17
18 However, if the Commission Staff hires an independent evaluator to assist it, then
19 TEP believes that the following criteria should be met to ensure that the evaluator selected
20 is experienced and independent:
21
22
23

24 ¹ TEP reserves its right to participate in all aspects of the proceedings in this docket and to
25 express its position (whether in support of, or in opposition to) these factors as well as any others
26 that may arise. By participating in these proceedings, TEP does waive any claim, position or
27 defense that it may have to any issue related to the Commission's re-evaluation of the Electric
Competition Rules.

a. The independent evaluator does not have a financial interest in and is not representing any utility, ESP or merchant power provider certificated in Arizona (or whose application for a certificate is pending) or who owns or is constructing a power plant in the State.

b. The independent evaluator has prior experience in developing policies and procedures for competitive solicitation in the electric power industry.

c. The independent evaluator has prior experience with wholesale power markets in the Southwest Region of California, Nevada, Arizona and New Mexico.

d. The independent evaluator is not representing any Regional Transmission Organization, Independent Systems Organization or the Federal Energy Regulatory Commission.

II. The Role of the Independent Evaluator.

The Procedural Order referred to the involvement of an "independent consultant/evaluator" in the competitive solicitation process. TEP believes that Commission Staff should fill the role of the independent evaluator. In fact, TEP believes that the Procedural Order contemplates such a role for Commission Staff. See Procedural Order dated May 2, 2002 at 2, lines 3-8.

The Staff's Request, however, simply refers to an "independent evaluator". TEP is unsure if the Staff Request's different terminology reflects a change in envisioned duties of the independent consultant/evaluator referenced in the Procedural Order. Obviously, if the

Commission Staff desires to retain a consultant to advise it relative to its role as an evaluator, TEP would not object to the scope that the Commission Staff might define. However, if the Commission Staff is proposing that the independent evaluator would take on the role of overseeing the competitive solicitation process and participants, then TEP offers the following recommendation:

The independent evaluator could monitor the development of the procedures and policies for the competitive solicitation process. Incumbent utilities should propose the procedure for competitive solicitation as well as submit proposed forms of Requests for Proposals ("RFPs"). Interested parties could provide their comments to the procedure and proposed forms of RFPs. The independent evaluator could act as a mediator for any disputes between the terms of the proposals of the incumbent utilities and the comments of the parties. If the independent evaluator determined that an unresolved procedure or RFP term was anti-competitive he could recommend that the Commission hold a hearing/arbitration on the issue for resolution. The independent evaluator could also reduce to writing the final procedures and acceptable RFP forms for competitive solicitation.

1 **III. The Payment Arrangements for The Independent Evaluator.**

2 TEP believes that if Commission Staff hires an independent consultant to advise it,
3 then the Commission's standard hiring and payment arrangements should apply. If,
4 however, Commission Staff and other parties believe that an independent evaluator is
5 necessary, then TEP would suggest that those parties share in the cost. This could be
6 accomplished by an assessment to those supporting parties or as part of a bid response fee.
7 Inasmuch as TEP does not believe that an independent evaluator is necessary, it also
8 believes that it would not be prudent to expend TEP funds to pay for the independent
9 evaluator.
10

11 **IV. A Description of Various Types of Competitive Solicitations and Their**
12 **Attributes.**

13 TEP has had limited experience in comparative competitive solicitation processes.
14
15 TEP is familiar with the RFP process, "on-line trading platforms" and telephone
16 brokerage. TEP is aware that some jurisdictions, such as New Jersey, are looking to a
17 more sophisticated auction program. Each of these processes has sufficient flexibility that
18 it can be adjusted to meet specific circumstances and desired results. However, TEP
19 believes that until the Commission provides a definitive framework for electric
20 competition it will be difficult, if not impossible, to assess in a meaningful fashion, the
21 benefits and detriments of any competitive solicitation process.
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A. RFPs.

TEP defines the RFP process as involving a written request (the RFP) for the acquisition of electric products and/or services that is distributed by a purchaser to potential sellers. The RFP should include well-defined protocols and schedules for products and/or services. The RFP process may establish criteria for the qualification of potential sellers and for the determination of how to select the "winning" seller.

The potential benefits for the RFP process include:

1. The RFP process is used in many contexts and participants generally understand the nature of the process and the obligations attendant to it.
2. The RFP process allows the purchaser to establish the terms and conditions of the transaction so that responses are limited to those who are interested to meet those terms.
3. The RFP process normally allows the purchaser time to conduct necessary due diligence on the sellers.

The potential drawbacks to the RFP process include:

1. The RFP process can be time-consuming in its preparation and execution.
2. There may be limited flexibility in the transaction as the purchaser is locked into the terms and conditions of the RFP even if circumstances change.
3. The evaluation of the RFP responses may be difficult depending upon the selection criteria.

1 The RFP process is generally viewed as easily understood and fair. However, it
2 may not be the most efficient process in a market that is volatile with frequent changes in
3 product and price. The RFP process is generally not very transparent as respondents to
4 RFPs usually are not aware of the terms and conditions of each response.
5

6 **B. AUCTIONS.**

7 TEP believes that it is important for the Commission Staff to decide upon formal
8 criteria for an "auction" in the electric competition arena. The generally accepted
9 definition of auction is "a public sale of property to the highest bidder".² In its brief review
10 of the auction process, TEP believes that many activities can be classified as an auction.
11 Telephone brokerage is one of the oldest trading methods in the electric power market that
12 uses a bidding process. Also, in a general sense, the RFP process could be considered an
13 auction. TEP is aware of certain "on-line trading platforms" that involve bidding
14 procedures that could be classified as auctions such as the Intercontinental Exchange
15 ("ICE") and the Automated Power Exchange ("APX"). The California Power Exchange
16 used bidding procedures when it was operational. In New Jersey, it appears that a more
17 sophisticated form of auction is being implemented with descending rounds of participants
18 until the winner is determined. It is likely that some participants will recommend that
19 types of auctions or bidding used in other disciplines should be adapted to the electric
20 power market. Each such auction process will need to be analyzed in the context of its
21 terms, conditions and purposes.
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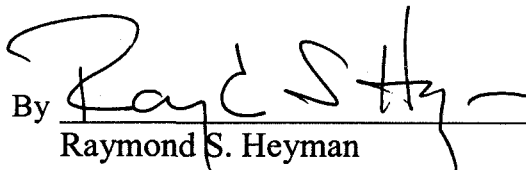
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27 ² See: Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1980) at 73; Black's
Law Dictionary 5th Edition (West Publishing Co. 1979) at 119.

TEP believes that once the Commission Staff determines if it will recommend that an auction be used as a competitive solicitation process it should select a specific type of auction and then request participant input on the benefits and drawbacks of the selected auction process. This will allow the participants to indicate any modifications or objections to the auction process.

TEP believes that generally auctions are viewed as being fair and transparent.

Respectfully submitted this 20th day of May 2002.

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